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**JAMES WILSON  
AND THE  
CONSTITUTION**

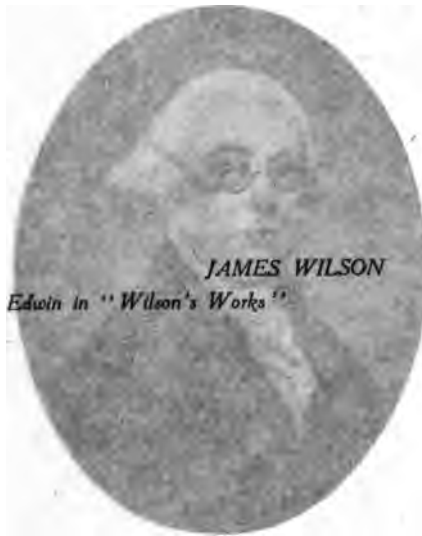
By

**BURTON ALVA KONKLE**

Secretary of the

**JAMES WILSON MEMORIAL COMMITTEE**





JAMES WILSON

*Engraving by Edwin in "Wilson's Works"*









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# James Wilson and The Constitution

THE OPENING ADDRESS  
in the official series of events known as  
The James Wilson Memorial

By

BURTON ALVA KONKLE

Secretary of The James Wilson Memorial Committee

Delivered before

The Law Academy of Philadelphia

on November 14, 1906

Published by Order of the Law Academy

1907

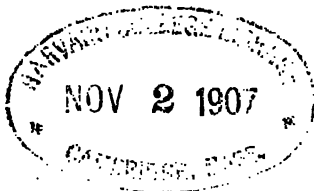
SAMUEL W. WOOLFORD, Jr.

JAMES McMULLAN

STANLEY WILLIAMSON

*Committee on Address*

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*Law Academy of Philadelphia.*

## INTRODUCTION

At the request of the Committee on Address of the Law Academy, a few words of preface are written in order to show the relation of the address which follows to the ceremonies attendant upon the removal of the remains of James Wilson, in the Autumn of 1906, from Edenton, North Carolina, to Philadelphia.

The author, Mr. Konkle, in his many years of investigation of the sources of American history, grew to appreciate Wilson, particularly his side as a statesman and a great leader of the Constitutional Convention. In his additional researches, he discovered that the body of this eminent Philadelphian lay, unmarked and almost forgotten, in a Southern State. The thought of placing his remains beside those of his wife in Christ Church may have occurred to many in the years which have followed his death, yet it remained for Mr. Konkle to originate and carry to a successful conclusion this laudable project.

The James Wilson Memorial Committee, composed of jurists, lawyers and public officials, was formed, and general attention was attracted to the movement by articles in the public press, and by an address on Wilson delivered by Mr. Konkle before the Historical Society of Pennsylvania in the spring of 1906. The interest of President Roosevelt was aroused, and a considerable portion of his speech at the dedication of the new State Capitol was devoted to a narration of the public services of Wilson. The present address before the Law Academy then followed, and was adopted by the Memorial Committee as one of the events upon the official program.

The ceremonies in connection with the removal and the reinterment of the remains were of a most impressive and solemn character. The body was brought from North Carolina by the U. S. S. *Dubuque*, and lay in state in Independence Hall. It was then taken to Christ Church, escorted by the First City Troop and followed by Justices of the Supreme Court of the United States, and many

others prominent in official life. Delegates from numerous patriotic and legal associations were in the procession. The Law Academy was represented by a committee consisting of Carlyle H. Ross, Joseph H. Taulane, John McClintock, Jr., Stanley Williamson, George J. Edwards, Jr., Samuel W. Woolford, Jr., James McMullan, Howard H. Yocum, Francis M. Gumbes, Graham C. Woodward, Theodore L. Cobaugh, Stanley Folz. In the church appropriate addresses were delivered by men of national reputation. An account of the proceedings, and the official texts of the addresses, were published by Mr. Konkle in the *American Law Register* for January, 1907, at the requests of its editor and the Memorial Committee.

Strange as it may appear, the following address is the first comprehensive biographical sketch of Wilson. The author was reluctant to consent to its publication, as he preferred to confine himself to a full treatment of the subject in a contemplated production of the life and works of Wilson. In honoring the request of the venerable Law Academy for its publication, he cannot have failed to remember that the constant demands for systematic instruction in the law by the students of this society who in the year 1789 met in one of the rooms of the College of Philadelphia, undoubtedly led to the Wilson law lectures the next year, and the establishment of a chair of law in the latter institution.

The widespread attention now directed to Wilson as a statesman has brought him hosts of admirers. Many may rise up to follow in the path which has been made for them, but the following pages from the pen of one who in his search for historical truth has pushed his way over untrodden fields must always have an especial interest and value.

WILLIAM MACLEAN, JR.,  
Penn Square Building,  
Philadelphia, Pa.

September 1, 1907.

## **JAMES WILSON AND THE CONSTITUTION**

On this 14th day of May, a full century and nineteen years ago, a little group of distinguished Virginians and Pennsylvanians ascended the steps of the old State House and gathered in the east room where, a decade before, had been witnessed the signing of an instrument that had declared free the whole people on the American shore. These eminent representatives, of the two greatest States created by that people, were gathered on this May day with great concern and anxiety, because that short but evenful decade had taught them that the freedom which they had won was but the foundation, and in no sense the mighty structure of nationality itself. There stood the revered general who had led the fight for freedom and the aged and feeble and not less famous diplomatist who had urged a vague vision of that nationality upon his people nearly a quarter of a century before. By their side were two men of a younger generation, to whom both looked with hope for completion of the mighty work that had scarcely been more than begun. The younger of these was Madison, who, although but thirty-six years of age, had been Virginia's most able representative in the Continental Congress since about the close of the Revolution. The other, a man in his prime at forty-five years, was the most learned and able lawyer in America, the head of Madison's own profession, the man whom Washington himself had chosen to teach the law to his favorite nephew some years before, and the one who had long been chief counsel for Morris, the financier of the Revolution, and for France—America's great ally in that conflict.

James Wilson, as he stood in that group, was known to them to be much more than the most learned and able lawyer among all who should gather at this convention, as shall presently appear; but no more significant knowledge

of him could be held by a body of leaders such as these, gathering, as they were, from all quarters of the coast, to re-create the fundamental law. Other things being equal, it was a fact that would enable the most casual student to predict with perfect safety a prominence and dominance in its deliberations, such as only an expert in his field could command. To whom, indeed, would those men turn for their soundest counsel in the creation of fundamental law, if not to the most able and learned student of law on the American shore?

While the Virginians and Pennsylvanians are discussing their program with other delegates during the next ten days while waiting for a quorum, let us take a closer look at this American, whom the French nobleman, Chastellux, described in his volumes five years before as "the celebrated lawyer." In appearance his was a strikingly erect figure, about six feet in height, with a full face of large features and large eyes, whose near sight compelled constant use of glasses, and an appearance of sternness when deeply interested. His features, as Mr. Waln says in a sketch which is the chief original source regarding him, were far from disagreeable, and his voice, while powerful, was, in its cadence, perfectly modulated. While slightly constrained in manner, he was dignified and not ungraceful, with an air of distinction that, to the radicals, gave him the stamp of aristocracy. The full length portrait of him given in the engravings of Trumbull's "Signing of the Declaration"—which are known to have been engraved from life—bear out these descriptions, as does the Montgomery miniature, which was probably painted in his earlier years. Take him all in all, as he stood there in that old east room, he was a worthy product of the best Scotch and American culture and, in physical appearance, a not unworthy son of the vicinity of the ancient Pictish capital and University seat, St. Andrews.

His life, thus far, had been spent about equally in America and Scotland. He was born in the lowlands near



**FORMAL REQUEST**

*to J. G. Wood, Esq., of "Hays," Edenton, N. C., for permission to remove the remains, by the James Wilson Memorial Committee, Samuel Dickson, LL.D., Chairman, Francis Rawle, Esq., Treasurer, and Burton Alva Konkle, Secretary*

*Wm. M. ...*  
*Francis Rawle*  
*Samuel Dickson*  
*Burton Alva Konkle*

*Secretary*



St. Andrews, on September 14th, 1742, so that his babyhood came in the midst of the revolution of 1745. His parents, Mr. Wilson and his wife, Aleson Landale Wilson, had several children, and, while little is known of the parents, sufficient is known to determine their high personal character, when his mother's letters remind him years later that his father had given him his education in hopes that he would devote himself to the ministry of the church and that she prays for nothing so much as that he be ambitious for godly things. He was but twelve years old in November, 1757, when, with nine other boys, he tried for one of the four vacant Foundation Bursaries at St. Andrews University, and, according to their records, he took "fourth place in the order of merit" and gained one of them. Just how long he studied there is not known. It is a curious fact, however, that one Alexander Wilson, a typefounder of St. Andrews and later of Glasgow, became Professor of Astronomy in Glasgow University, and that his second son, James, entered the latter institution in 1757. If this was not James, himself, the only other entry in their records is that of 1762, when he would be seventeen years old, and his father, James, a resident of County Clydesdale, and Douglass Parish—which seems the more probable, for Mr. Waln definitely states that after grammar school study and a short period at St. Andrews, he studied in the Universities of Glasgow and Edinburgh.

"And what an age was that in the history of Scotland," says Frank Gaylord Cook, a Boston lawyer, in his excellent estimate of Wilson in the September *Atlantic* for 1889—"the latter part of the eighteenth century. Edinburgh was the resort of that celebrated literary coterie which included, with others, Hume, Ferguson, Adam Smith, Hugh Blair and William Robertson. The one last named was principal of the University, and at the height of his fame and activity as a theologian and historian; Blair, Regius Professor of Rhetoric, was delivering those lectures which embody the literary taste found in the classic pages of Addison, Pope

and Swift; Adam Smith, Professor of Moral Philosophy at Glasgow, was developing his great system of political economy." Just how long or when he studied at Edinburgh is not known, although its records show that he entered upon Blair's studies in rhetoric in 1763 and began logic and ethics under Stevenson and Ferguson, respectively, early in 1765. That he had more notion of the "wealth of nations" than the ministry is not only proven by his career, but is suggested in a letter of his last teacher of English, a Thomas Young, who began giving him instruction in bookkeeping on June 13, 1765, just before Wilson left for America. This instructor recalls to his distinguished pupil how he also tried to instruct him in golf, and "Jamie" beat him on every round—a proceeding which he observes was of the nature of prophecy!

In June, 1765, Wilson was in his twenty-third year, after a long period of the most liberal education. Three months before, the Stamp Act had been passed and America, led by the distinguished publicist, Dickinson, of Philadelphia, and others, was becoming more and more aroused. New York was especially aggressive in resistance, and, young Wilson, borrowing money to enable him to make the voyage, set sail for that port and was there in abundant time for the meeting of the Stamp Act Congress in October. Here came the brilliant John Dickinson from the metropolis in Pennsylvania—a young man of but thirty-three, whose discussion of economic and political relations of this question was even then circulating both here and abroad—the most able and popular expression on the subject by any American. Here came McKean, of Delaware, and the Livingstons of Jersey and New York, and Rutledge, of South Carolina, and Otis, of Massachusetts—the first real American Congress. It did not take young Wilson long to decide that he would settle in the metropolis on the Delaware where the cultured Dickinson lived; and, about the time that Franklin was undergoing that dramatic examination in the House of Com-

mons, in February next, 1766, Wilson was in Philadelphia with highly recommendatory letters to Dr. Richard Peters, rector of Christ Church, and others.

Dr. Peters secured his introduction as an usher at the College and Academy on Fourth Street, near Arch, at once, and in his examination for the post of tutor in Latin in both institutions, he proved to be "the best classical scholar who had offered as a tutor in the Latin department of the College," says Mr. Waln. His first "chum" in Philadelphia was a young man of eighteen, recently graduated from the College, named White, who was addressed in letters by Wilson thereafter as "Dear Billy," and later in life Bishop White testified to the strength of this early friendship. At a spring meeting of the Trustees Mr. Wilson had asked for the degree of Master of Arts, which that body readily agreed to "in consideration," says Montgomery, quoting from the minutes, "of his merit and his having had a regular education in the universities of Scotland." It was conferred on him at the following commencement, and also on "Joseph Reed, Esq., of Trenton," who was one day to be Governor of Pennsylvania. One of the students of James Wilson, Master of Arts and Latin tutor in the Academy, was Alexander Graydon, who states in his *Memoirs* that "the ushers, during the term of my pupilage, a period of four years, or more, were often changed; and some of them, it must be admitted, were insignificant enough; but others were men of sense and respectability, to whom, on a comparison with the principal, the management of the school might have been committed with much advantage. Among these," not to name more, "was \* \* Mr. James Wilson \* \*."

The young instructor in Latin was greatly impressed by the brilliant Dickinson, who had written the resolutions of the late Stamp Act Congress which had apparently secured the repeal of that measure. Although but thirty-four years of age, Dickinson had had the best culture the colonies afforded and three years of legal training in the Middle

**Temple.** Since 1755—over ten years—he had been in practice, such as learned leisure like his own cared to undertake. Four years before he had entered the Assembly and at once had become the leader of the proprietary party against Franklin and the popular party, but had virtually become a leader of all parties in the Stamp Act resistance. He was a man after Wilson's own heart, and to study law under him became the young tutor's ambition almost immediately. It required the intervention of young White and Attorney (afterwards Judge) Richard Peters, however, and Wilson was soon so deeply engrossed in his studies that he effected a loan in Scotland and gave up his tutorship, devoting himself assiduously to his studies under Dickinson for two years. These two scholarly men were not so unequal as a decade's difference in age might indicate, for what Dickinson gained in the Middle Temple and his decade of self-culture, was somewhat balanced by the superior university training of his pupil and his more severe purposes. For, it did not require many years to indicate Wilson's equality and final superiority. Wilson meant to make a severe profession of the law, while Dickinson was the cultured country gentleman and was soon issuing his celebrated "Farmer's Letters" that almost instantly became the faint voice of American nationality. Wilson was admitted to the Philadelphia Bar in November, and the first of the "Farmer's Letters" appeared in the *Pennsylvania Chronicle* at the beginning of the following month, 1767.

Some time in 1768—Wilson's twenty-sixth year—when the Townshend Acts were still irritating America and Pennsylvania was negotiating for the great land purchase from the Indians, he sought a location to begin the practice of law and first tried Reading. A few months later, however, he decided upon Carlisle as more advantageous, and, according to Judge Biddle, who has examined the records of his residence there more carefully than any one else, he located in January, 1769, and in April following was admitted to the

Supreme Court. There is little record of his practice during this first year, but there is evidence of some of the most profound and significant study that he ever did. The irritating Townshend Acts by Parliament had, during this year, so incensed the colonies that non-importation agreements were general everywhere. The prevailing opinion in America was that Parliament had many rights over the colonies, but not that of taxation. Even Burke admitted the right, and there was a growing sentiment in Parliament that that body had all rights over the colonies. Wilson determined to investigate the subject himself, "with a view and expectation," said he in the preface, "of being able to trace some constitutional line between those cases, in which we ought, and those in which we ought not, to acknowledge the power of Parliament over us. In the prosecution of his inquiries he became fully convinced that such a line does not exist; and that there can be no medium between *acknowledging* and *denying* that power in all cases. Which of these two alternatives is most consistent with law, with the principles of liberty, and with the happiness of the colonies, let the public determine." "Many will, perhaps, be surprised to see the legislative authority of the British Parliament over the Colonies denied *in every instance*. Those, the writer informs, that, when he began this piece, he would probably have been surprised at such an opinion himself; for, it was the *result*, and not the *occasion*, of his disquisitions."

His conclusion was, that the colonies were subject only to the Crown and in no degree to Parliament. This was a position in opposition to the British leaders and considerably in advance of those of the colonies themselves, but based solidly upon the English Constitution, as we all now know. "This," says Mr. Cook, in the *Atlantic Monthly*, "displays an originality, a penetration, a grasp and a foresight that places him among the greatest political thinkers of his time. Rising above the level of contemporary political thought, he laid bare the absolutist tendency in the ministerial policy,

showing that it was both false and dangerous to English liberty and to the English Constitution. At the same time, pointing to the history of colonization and the terms of the colonial charters, he showed what policy would both accord with legal precedent and promote the prosperity of the empire." "Allegiance to the King," said Wilson on page 21, "and obedience to the Parliament are founded on very different principles. The former is founded on protection, the latter on representation. An inattention to this difference has produced, I apprehend, much uncertainty and confusion in our ideas concerning the connection, which ought to subsist between Great Britain and the American Colonies." Besides his own vigorous reasoning he quoted Blackstone, Burlamaqui, Montesquieu, Bacon, Coke, the reports of Raymond, Salkeld and many others, showing that decisions had already settled the matter as to Ireland, Jamaica and other regions, which had their own legislatures. One cannot go astray in saying that this paper must be considered one of the first in the constitutional literature of the Revolution, and it came from the pen of a young lawyer in Carlisle in his twenty-seventh year. Had it determined English policy at this period, as it does now, the British flag might—other things being equal—be floating on both sides of the St. Lawrence. The paper, however, was not ready for the press when the non-importation agreements ceased and it was laid aside in hopes that its counsels would yet prevail in London.

While he was at Reading there were, a half dozen or so miles distant, some iron works owned by Mr. Bird, whose name was given to the settlement, Birdsboro, and the young attorney became interested in his daughter, Miss Rachel. So that his industry in his early years at Carlisle was no doubt partly prompted by visions of a home of his own. Judge Biddle has shown that in 1770 he was taxed, but without property; in '71, with a lot; in '72, with a lot, two houses and a cow; in '73, a lot, two houses, a cow and a negro slave; and in '74, horses and farms appear; so that it







1906. The author is indebted to Mr. C. J. Johnson for the material used in the preparation of this paper. 50

PREPARATION OF CEMENTS OF THE NITROGEN SYSTEM

**DEDICATION OF EPIOTAPH ON WILSON'S GRAVE**

*at "Hags" private cemetery, Edenton, N. C., immediately after the disinterment on November 20, 1906*

might safely be predicted that he married about the time he got the lot in '71, even before the actual facts are known! The tax receipts may also be supplemented by the information that a still more precious possession arrived in 1772, on September 23d, in the form of a daughter, Mary, the only one of his children who ever married. His prosperity was well founded, for out of 817 cases in the Carlisle courts alone in the five years including and succeeding 1770, Attorney Wilson appeared in nearly half of them, 346, to be exact, and it is well known that his practice extended to other counties and the Supreme Court. In addition to these exertions, however, he found time, in 1783, to assume a professorship of English Literature in the College of Philadelphia, although it must have been of the nature of a special course of lectures at certain intervals, as meager information regarding them would also indicate; although had not Boston gone so extensively into operations in tea the following winter these lectures on the pleasing field of literature might have been longer lived.

The winter of '73-'74 had hardly passed when Parliament began to make an example of Boston and carry to the very limit those vicious conceptions of its power, on which Wilson thought so profoundly five years before. In June the Boston port was to be closed; the Quebec Act alarmed all the colonies; Virginia called a colonial congress; other States also called them, and Philadelphia was agreed upon; delegates were chosen everywhere; July 12th a meeting was called at Carlisle in the Presbyterian Church, and Attorney Wilson was made Chairman of a Committee of Observation and Correspondence and also of a delegation to the State Conference on the following Friday, the 15th; on that day he was in Philadelphia and was at work on the Convention's Committee on Resolutions; now was the time to bring out that paper on the Legislative Authority of Parliament; he took it to the Bradfords, over at the old London Coffee House, and it was out soon after the 17th of August. His

preface to it is not characterized by excitement or hysteria; on the contrary, there is the superb poise of the profound student and statesman. To the public, "the writer submits his sentiments," it reads, "with that respectful deference to their judgment which, in all questions affecting them, every individual should pay." It was a courageous act and bold, for by it he became liable to trial and severe punishment in England. It was widely read then and during the first Continental Congress, which met a few days later, on September 5, at Carpenter's Hall. The over-cautious Assembly, which met five days after Wilson's preface was written, naturally did not choose him to that Congress. His friend, Dickinson, however, took great pleasure in dining them at Fair Hill day by day, for neither was the author of the "Farmer's Letters" chosen to that Congress. After New Year's Day, 1775, however, a new provincial convention met in which Wilson made a powerful plea for Massachusetts' right to resist any change in her constitution or charter not agreed to by her legislative body. His speech reminded those who objected to the revolutionary methods that he was standing by the spirit, not the forms, of the Constitution. "Was the convention of the Barons at Running Meade," said he, "where the tyranny of John was checked and Magna Charter was signed authorized by the *Forms* of the Constitution? Was the Convention-Parliament that recalled Charles the Second, and restored the monarchy, authorized by the *Forms* of the Constitution? Was the convention of Lords and Commons that placed King William on the throne, and secured the monarchy and liberty likewise, authorized by the *Forms* of the Constitution? I cannot conceal my emotions of pleasure when I observe that the objections of our adversaries cannot be urged against us, but in common with those venerable assemblies, whose proceedings formed such an accession to British Liberty and British Renown." And the people followed him, for the Assembly on May 3d, next, made him Colonel of the Fourth Battalion

of Cumberland County Associators, and three days later sent him with Franklin and Willing to the second Congress which was to meet on the 10th. Indeed, the events of the previous month in England had made it impossible to do otherwise.

Colonel Wilson took his seat in Congress five days later, just the day before Massachusetts drafted her letter asking for the counsel of that body. This reached the State House on June 2, and the committee elected to report on it were Rutledge, Johnson, Jay, Wilson and Lee, who advised, as Wilson had already advocated that Massachusetts owed no allegiance to Parliament, only to the King, and this was followed by preparations to aid her in preserving her charter. He was put on the Finance and Indian Affairs committees, and was soon in Pittsburg trying to form a treaty that would overcome the mischief caused by Lord Dunmore. Here he was occupied much of the rest of the year, although he was re-elected to Congress in November, and curiously enough was placed on a committee to consider the protection of Virginia. Almost immediately, also, he was placed on a committee to reply to the ministerial proclamation, that on Naval Prizes, chairman of Indian Trade Relations, and by the beginning of the year on others, among them, one on the Forces Necessary to Defend the Whole Country, and also on an address to all the inhabitants, and the measures for effecting a union with Canada, and conference with General Washington on that subject. Indeed, he was one of the leaders in plan of campaign, later the Board of War, and like committees of the first order, up to June, 1776, when the Declaration of Independence came up for consideration.

Unfortunately, previous to June 14, the resisting elements in the Pennsylvania Assembly had absolutely forbidden their delegates in Congress to agree to independence, and Wilson was wise enough to wait and at the same time secure a removal of that prohibition through his friends Dickinson, Morris, Smith and others, who drafted the new

instructions, which became effective on June 14. This course of Wilson's gave the radical element an opportunity to misrepresent and injure him with the people. On June 20th, Hancock, Jefferson, the Adamses, Morris and other members of Congress to the number of about a score, issued a public defense of Wilson from "Congress Chambers." They stated that "Mr. Wilson, after having stated the progress of the dispute between Great Britain and the Colonies, declared it to be his opinion that the Colonies would stand justified before God and the world in declaring an absolute separation from Great Britain forever; and that he believed a majority of the people of Pennsylvania were in favor of independence, but that the sense of the Assembly (the only representative body then existing in the Province) as delivered to him by their instructions, was against the proposition, that he wished the question to be postponed, because he had reason to believe the people of Pennsylvania would soon have an opportunity of expressing their sentiments upon this point, and he thought the people ought to have an opportunity given them to signify their opinion in a regular way upon a matter of such importance—and because the delegates of other colonies were bound by instructions to disagree to the proposition, and he thought it right that the constituents of these delegates should also have an opportunity of deliberating on said proposition, and communicating their opinions thereon to their respective representatives in Congress. The question was resumed and debated the day but one after Mr. Wilson delivered these sentiments, when the instructions of the Assembly referred to were altered and new instructions given to the delegates of Pennsylvania. Mr. Wilson then observed that, being unrestrained, if the question was put he should vote for it; but he still wished a determination on it to be postponed for a short time until the deputies of the people of Pennsylvania who were to meet should give their explicit opinion upon this point so important and interesting to themselves and their



posterity; and also urged the propriety of postponing the question for the purpose of giving the constituents of several colonies an opportunity of removing their respective instructions, whereby unanimity would probably be obtained." Wilson knew that the people were divided on the legality of that Assembly, partly sworn and partly not under oath, but he also knew that the Provincial Conference which was to meet on June 18 would call a Constitutional Convention about whose legality he, at least, would have no question, but the main point is that this *believer* in the *people* wanted to *wait* for the people, and, he it was, more than any other man, who stayed the Declaration until the people themselves were ready, and during the first week in July was among those who most heartily and courageously signed that immortal instrument.

A mighty step was taken. Heretofore Congress had been fighting Parliament. Now it had severed all relations to the British crown, and they were an independent people. Wilson's calm poise, based upon constitutional liberty and the spirit of the laws, brought him to the top in this crisis, but it marked him as a power hateful to the radical visionaries and enthusiasts who drew their inspiration largely from the Turgot school, when it was not from any school at all, and the Constitutional Convention of 1776, which gathered at the State House on July 15th, in the room opposite Congress Chamber, where James Wilson sat—full of radicals as it was—had no more use for James Wilson than the Tory Assembly that refused to send him to the First Congress. He looked upon their constitution as a monster of tyranny in keeping with the proscriptive course under it, and both not a whit better than the vicious theories and actions of Parliament. And forthwith began that indiscriminate condemnation of all who opposed this Constitution. They were dubbed Tories and many were branded with that name whose sole crime was that they withstood the tyranny of the Constitution of '76 and the Assembly as they had that of

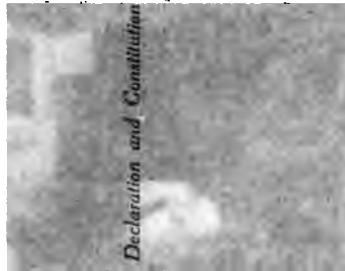
Parliament and the King. During the autumn and winter, while Wilson was one of the busiest men in Congress—one of its very first leaders, as the Journal abundantly shows—the storm raged against Wilson and other opponents of the Constitution. The condition of Pennsylvania was the despair of the whole of the Colonies and the Army. On February 4, '77, the storm burst upon Wilson and the Assembly did not re-elect him. "You have probably heard," he wrote St. Clair on the 19th, from Baltimore, where Congress was then sitting, "that I am removed from the delegation of Pennsylvania. I retire without disgust; and with the conscious reflection of having done my duty to the public and to the State which I represented. On Tuesday next Congress will adjourn from this place to Philadelphia." Wilson's presence was absolutely demanded in Congress, however, and it is said that General Washington went so far as to entreat members of the Assembly to return him, and on the General's birthday they acquiesced. On March 27, Wilson wrote his friend St. Clair, "I have resumed my seat in Congress. My reason is, that if at any time I can be useful to my country, I can at this. Pennsylvania is in the greatest confusion; perhaps order may at last arise from it."

It is, of course, impossible to enter into the details of that threatening period in the year 1777. Wilson was made chairman of the Committee on the Protection of Philadelphia, and bore the brunt in most of the important committees—and what Herculean tasks were theirs in those dark days! With the closing in of the British toward Philadelphia, the Assembly again vented its wrath on Wilson, and on September 14th superseded him in Congress by his fellow Master of Arts of years before, Joseph Reed. Wilson took to the field as colonel of militia in New Jersey, and after the fall of Philadelphia he is said to have been for a time in Annapolis. If so, it was merely a temporary matter, for in '78, with the evacuation of Philadelphia, he took up his permanent residence there in a house on the southwest cor-



**LYING IN STATE**

**in the Declaration and Constitution Room, Independence Hall, under guard of First City Troop, November 22, 1906**



ner of Third and Walnut Streets, and became a private citizen again, if such activities as his could be called private. He became a trustee of the College of Philadelphia and took up the work of the courts again and defended the rights of those, like Morris and others, who were persecuted as Tories, merely because they opposed the Constitution of 1776. His very presence was a rebuke to the proscriptive course of the State Government and its followers, and they feared his power as they did that of no other man. During this year he appeared in the Chester County election case, later in the proprietary-property case, and still later in the college restoration case, upholding the spirit of the laws, and in each instance, with profound insight, exposing the unusual principles that were then governing in Pennsylvania, so far as law and liberty were concerned. The French alliance of the previous February and the army's victories gave practical assurance that the success of the Revolution was only a matter of time, and Wilson was already meditating on plans of reconstruction in all walks of life. Early in '79 the French government sought his services to guide her legal relations in this confederation chaos. He commanded the highest prices of any lawyer, and when he stated them and the French objected to them, he offered his services free of cost out of regard to France's friendship to his country. Later he was presented a "princely sum." He wasn't simply a lawyer in these cases, but a constructor; he mapped out a full consular system for France in America—in short he was doing as far-reaching things out of Congress as ever he did within it. During 1779 he and others organized the Republican Society. During '79 it was, too, that he began actively taking up the development of the country, not only in Pennsylvania and other States of the East, but in the vast new territories of the West, over which the States were quarreling but which was bound to become National domain. He was an owner of the combined Illinois and Oubache Land Companies, and later became their attorney and presi-

dent, and from this time until his death it is doubtful if there was a greater individual land owner in America. Two years later he owned 300 shares in the Indiana Land Company, whose bounds covered a good part of two great States, and ran up to "the Chicagou or Garlick River," and gave a name to the Hoosier State years later. Within a dozen years or so he had sold a half million acres to the Holland Land Company and bought over 4,000,000 acres scattered in all parts of the South from the Potomac and Ohio to the western boundary at the "Great River." His papers show that he was not merely a speculator, but, as he put it to certain Dutch capitalists, proposed to develop our need with their abundance of men and money. He outlined to them a plan of immigration and development imperial in its scope. He had the bold vision of the men of 1861 who planned the great Pacific railroad. He established mills and factories and around one of them in Northampton County grew up a settlement called Wilsonville.

But of course all of this was not done in 1779, but that potent spirit and outlook was there in '79, and when affairs went wrong in Pennsylvania it was liable to be charged to Wilson and Morris. The depreciation of the currency and the various panicky conditions of that year culminated in October, on the 4th day thereof, in a mob of militia starting out to find some of the personal causes, as they believed, of all their woe, and Wilson's friends, hearing of it, went down to Third and Walnut to help protect him. Fortunately, the skirmish that followed, and which has been so vividly described by the late Frederick D. Stone, was stopped by President Reed and the City Troop, with slight loss of life, but the event gave the residence the title of "Fort Wilson," and some years later he left it and located among the distinguished mansions on Market Street, in the region of Sixth.

In the wretched financial situation of 1780 Wilson, Morris and others conceived a banking company to finance the army, Morris subscribing £10,000 and Wilson heading

the £5000 list, Congress hailing their patriotism with joy. This led to Morris heading the financial side of the confederation, and Wilson's papers show that from that time forward he was both legal constructor and defender of the Bank of Pennsylvania and the great Bank of North America which were their instruments, and was Morris's constant legal counselor. It was at this time that General Washington wanted his nephew, Bushrod, to study law with Wilson, whose fee was higher than that of any other lawyer, in consequence of which young Bushrod wanted his uncle to try some one else, but the General wanted Wilson, and paid the fee, as the young man afterwards described the affair, in his old age. And this banking aid of the army converted the masses in Pennsylvania from enmity to loyalty to Wilson, and late in 1782 he was sent back to Congress to aid in bringing order out of chaos; not only so, but with the aid of the Republican Society which he was active in organizing to reform the vicious Constitution of '76, three years before, this banking movement brought Wilson's party into increasing control of the State government. In its prospectus, attributed to him, they said: "While we oppose tyranny from a foreign power, we should think ourselves lost to every sense of duty and of shame were we tamely to acquiesce in a system of government which, in our opinion, will introduce the same monster, so destructive of humanity, among ourselves. Such a system we conceive the Constitution framed by the late convention to be." But Wilson was wise, and not long after his return to Congress his party were masters of the Assembly and he was studying the science of government daily. It was at this time, in 1782, that Marquis de Chastellux, a member of the French Academy and a Major General under Rochambeau, wrote of a visit with Wilson, "a celebrated lawyer," said he, "and an author of several pamphlets on the present affairs. He has in his library all our best authors on public law and jurisprudence; the works of President Montesquieu and of Chancellor

d'Aquessau hold the first rank among them, and he makes them his daily study." The translator adds in a foot-note that Wilson "is making a fortune rapidly in the profession of the law at Philadelphia," and is "a man of real abilities, and Mr. Morris's intimate friend and coadjutor in his aristocratic plans."

The Revolution was over. Wilson was forty years old only. He was made Brigadier-General of militia in Pennsylvania to aid in putting it on a sound basis. He was made leading counsel to defend Pennsylvania's claims to her northern territory against Connecticut in a special court at Trenton, and succeeded. He was a member of Congress from '83 to '87, except in '84, when the land companies' claims, in which he was interested, were before it; but he attended only at times of special importance. Congress was proving its organic inefficiency. Its proceedings at this time require very thin volumes. Strong men were busy restoring the wreck of the long war. A new population was pouring into the vast land of opportunity. The war which held the people together as Americans had closed, to relax the tie and make them citizens of bickering States. The confederation was powerless. The loosened tie of nationality was as an oppressive nightmare to the most thoughtful. As commerce was resumed trade relations became chaotic and exasperating. Attempts were repeatedly made to secure uniformity, regulation and revenue by vesting in Congress powers of establishing impost duties, but in vain. Finally, in January, '86, Virginia began agitation for a trade convention of the States, but even she did not send out her call until July. It was during this agitation that, on April 14, one of the great sorrows of his life came to James Wilson in the loss of his wife, a bereavement all the more pathetic since it left a family of six children, the oldest of which was but fourteen and the youngest an infant. It was over seven years after the mound was made in Christ Church yard before he found himself ready to fill that



vacancy in his home. Thus it was that James Wilson was in the midst of a deep sorrow when representatives of five States met in the trade convention at Annapolis on September 11, 1786, when two young men from Virginia and New York were influential in recommending that a fuller and more serious convention be held at Philadelphia on the second Monday of May, next following, at the State House, to consider serious defects in what they called "the Federal Government."

During the winter of '86-7 a few choice spirits grasped the national idea in a vague form, and the momentous project drew from all the States their soundest and broadest men to the Philadelphia State House square like a magnet. McMaster has happily described them to us. During the ten days from May 14 a quorum had gathered, and on May 30, after five days of deliberation, the *Gazette* gave as its earnest conviction that "Perhaps no age or country ever saw more wisdom, patriotism and probity united in a single Assembly than we now behold in the convention of the States." And after three months the same journal again affirmed that "Such a body of enlightened and honest men perhaps never before met for political purposes in any country upon the face of the earth"—a judgment that time has only tended to confirm and reiterate with even more positive conviction. If ever a body of men in the history of the world was worthy to be called a school of constructive political and governmental science, that body was this convention in the old east room of the State House. They were not mere adapters of historical and political writers like Montesquieu; they were scientific creators, thinking through the problem themselves in a new field. Some came to it from the soldier's or citizen's point of view; some came from the constructive statesman's viewpoint or that of the practical student of politics; but, fortunately for them and for us, one came to it from the experience of the most learned student of history and law, and as a scientist in politics. James

Wilson "was above all a political scientist," says A. C. McLaughlin, the distinguished historian of Ann Arbor and Carnegie Institution, in a scholarly estimate of him in the *Political Science Quarterly* for March, 1897—probably the ablest estimate of Wilson yet written; "he had grasped firmly the teachings of the past so far as they disclosed the nature and organization of the State and the safest principles of judicious government. He was a student of history, and his study had brought him organized knowledge. He was not a master of the art of politics, but he knew with scientific accuracy the fundamentals of statecraft. He was suited, above all else, to share in the building of a new State and to labor as the architect of a new government."

The operation of the convention was amusingly like any one of multitudes of gatherings for organization so characteristic of Americans. The Virginians presented some resolutions embodying some of the main points of what they thought ought to be carried, and others tried an actual draft of a new Constitution. Some, with nervous anxiety and timidity, wanted the old articles of confederation amended. Wilson was more concerned with the settlement of some great principles than details and mechanism; not as a theorist, either, but as "the most learned civilian," as Bancroft calls him, with his conclusions based on scientific deductions. His great principles, like the decalogue, have now become commonplaces to us from long familiarity, but they were absolutely novel to his followers and the history of the past. Let us see what some of them were: He believed the American people were a Nation, not a union of States; that they had become free collectively, not individually, and should form a government that should be an exact transcript of their society. In consequence, he believed supremely in the people—trusted them absolutely, more than the convention itself did, or more than his times did. We are not yet abreast of him in his trust in the people, although we are rapidly growing in that direction. Consequently he was

there not to consider the old articles at all, but to create a National government, resting, not upon States, although fully recognizing them, but on the people directly. He was the first to clearly conceive our great modern idea of local, State and National government, *each* being the creature of the people, responsible to them, and resting on them. Not even Madison, whom Bancroft calls "the most careful statesman in the convention," grasped the idea as Wilson did, and the evidence of general confusion on this point in the minds of this body reveals, more than anything else, the century in which they lived, and the peculiar modernity of the views of Wilson. This was the secret of the first great struggle of the convention, and, indeed, of every struggle of great moment during the entire sittings of that body. This it was which was the most characteristic product of this distinguished body.

Montesquieu and others had long observed the scientific nature of distinctly separate executive, legislative and judiciary branches and checks and balances in government, as illustrated in some degree in the British Constitution. There was not much objection to this idea, but even in this matter Wilson was easily the most influential in determining the nature of each. He it was who insisted on the single executive elected by electors of the people. He was on the committee which itself practically created the judiciary department. But his great principle came to the surface in the greatest crisis, the climax of the convention, when he applied it to the legislative branch, which the best thought of the day had practically settled should be bi-cameral—namely, that both houses of Congress should be responsible to the people and elected by them. No question precipitated a crisis so nearly an approach to rupture as this, which was forced upon the convention by the small States and supported by those localists who failed to grasp Wilson's idea that the State was as safe as the Nation, since both were the people's permanent creation and possession. Wilson pro-

posed the election of both houses by the people and succeeded with the Lower House, but finally yielded to Madison's "carefulness" in surrendering the election of the Senate to the States. Wilson always felt this an anomaly in government, and no student of constitutional development can read the attitude of the people toward this question today and not be startled to see how fast they are traveling toward Wilson's principles. Wilson, however, accepted the compromise with loyalty, but always was apprehensive of the ideas of State sovereignty that it carried with it as containing a future struggle and indicating where the line of cleavage would appear.

These were the great questions in which Wilson's counsel loomed high in the minds of the convention. He did not take so much interest in working out the minor problems. In the matter of check on legislation, he wanted the Executive and Judiciary to both have a negative on the passage of laws, anticipating Marshall and the modern practice of the judiciary's power to determine a law's constitutionality. He wanted the constitutionality determined before its passage so far as possible. With characteristic logic he applied his combined principles of nationalism and democracy to the end. There is nothing more modern than his defence of the rights of the Western settlements to equality. "The majority of the people," said he, on the very day that Congress passed the great ordinance of 1787, creating the Northwest Territory, "the majority of the people, wherever found, ought in all questions to govern the minority. If the interior country shall acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no." One other point may be noticed as characteristic, namely, his insistence that the finished Constitution should be submitted to the people in convention, and not to the State legislatures, a proposal that prevailed. With these points, and others, settled, Wilson was, of course, placed on the committee to





Received by: Chief Justice Laffin and other justices at Montreal, Quebec, Canada  
ВВОССТЮМ ГЕННИС КЪДЕМЕНДИМЪСЕ НЪИТ

PROCESSION LEAVING INDEPENDENCE HALL

headed by Chief Justice Fuller and other Justices as honorary pall-bearers



draft them into constitutional form, and the Historical Society of Pennsylvania now has among its treasures two successive drafts of that instrument in committee in his own hand.

The convention rose on September 17th, and about ten days later Congress had referred the new instrument to the people's conventions of the several States. The objectors both within and without the convention, especially the latter in Pennsylvania, at once tried to arouse alarms, and at the request of many eminent citizens Wilson, whom Washington then characterized as "as able, candid and honest a member as was in the convention," addressed a mass meeting at the State House on October 6th, replying to the false insinuations: On the omission of a bill of rights, he stated the great difference between State and National constitutions. "In the former case," said he, "everything which is not reserved is given, but in the latter the reverse of the proposition prevails, and everything which is not given is reserved." To the objection that trial by jury was not provided for, he said it was impossible to provide for it other than to trust the court regulations to the people's representatives in Congress. To those who objected to the toleration of a standing army, he showed that the confederation already provided for it and no nation on earth was without one. To the fear of an aristocracy in the Senate, he showed that the Senate was helpless without the consent of their representatives and their chief executive; besides, said he, "the Senate is a necessary compromise—for my part, my admiration can only be equaled by my astonishment, in beholding so perfect a system formed from such heterogeneous materials." To the objectors that it was designed to reduce the States to mere corporations, he showed that a President could not be elected except there be a State legislature; there could be no Senate except there be a State legislature; and the House itself could not exist without the State legislature, for it was to be elected in the same way as the most numer-

ous branch of the State body. To objectors to the power of direct taxation, he predicted that the great revenue of the nation would always be by impost duties, but emergencies required the power to preserve the credit of the Union—a point the Pennsylvanians were quick to understand just then. He finally closed with reflections on opposition that must be expected, and that it was a human instrument, although with the seeds of reformation within itself. “I will confess,” said he, “that I am not a blind admirer of this plan of government, and that there are some parts of it which, if my wish prevailed, would certainly have been altered. But, when I reflect how widely men differ in their opinions, and that every man (and the observation applies likewise to every State) has an equal pretension to assert his own, I am satisfied that anything nearer to perfection could not have been accomplished. Regarding it, then, in every point of view, and with a candid and disinterested mind, I am bold to assert that it is the *best form of government which has ever been offered to the world.*”<sup>1</sup> This speech was printed in the *Gazette*, and Washington and others secured its reprint in Virginia and New York.

By the 7th of December Delaware had ratified the Constitution, while Pennsylvania was considering it, only because the minority in the Assembly tried to block reference to the people by absenting themselves. As but two were needed, however, they were captured, and on the third Tuesday in November a convention was considering Wilson’s presentation of the matter and ratified the Constitution five days after Delaware. This presentation attracted attention in both Europe and America years afterwards. It is impossible to treat it fully here. “Government, indeed,” said he, “taken as a science, may yet be considered in its infancy.” Again, “America presents the first instance of a people assembled to weigh deliberately and calmly, and to decide leisurely and precisely, upon the form of government by

<sup>1</sup> Italics by the author.

which they will bind themselves and their posterity." In showing that the great law of representation, the vital principle of government, was even in the British Constitution, "confined," as he said, "to a narrow corner," he added, "the world has left to America the glory and happiness of forming a government where representation shall at once supply the basis and cement of the superstructure." On the location of supreme authority, he showed that, unlike Britain, where it lies in Parliament, in America it did not even reside in constitutions, although that was nearer the fact, for here, "in truth, it remains and flourishes with the people." "That the supreme power, therefore, should be vested in the people is, in my judgment, the great panacea of human politics." "But," said he, in closing, "when we take an extensive and accurate view of the streams of power that appear through this great and comprehensive plan, when we contemplate the variety of their directions, the force and dignity of their currents, when we behold them intersecting, embracing and surrounding the vast possessions and interests of the continent, and when we see them distributing on all hands beauty, energy and riches, still, however numerous and wide their courses, however diversified and remote the blessings they define, we shall be able to trace them all to one great and noble source, the *People*."

It was in this discussion that, on October 26, '87 (not '88, as Bryce has it; that was the year of publication), Wilson said: "To control the power and conduct of the Legislature, by an overruling Constitution, was an improvement in the science and practice of government, reserved to the American States." This idea seemed not to be understood in Britain. "The British Constitution is just what the Parliament pleases." "The first statesman who remarked this," says Bryce, "seems to have been James Wilson," "one of the luminaries of the time to whom" "subsequent generations of Americans have failed to do full justice." His speeches "display an amplitude and profundity

of view in matters of constitutional theory which place him in the front rank of the political thinkers of his age." It was in this discussion that he said, in one of his closing appeals: "By adopting this system we shall probably lay a foundation for erecting temples of liberty in every part of the earth. It has been thought by many that on the success of the struggle America has made for freedom will depend the exertions of the brave and enlightened of other nations. The advantages resulting from this system will not be confined to the United States; it will draw from Europe many worthy characters, who pant for the enjoyment of freedom. It will induce princes, in order to preserve their subjects, to restore to them a portion of that liberty of which they have for so many ages been deprived. It will be subservient to the great designs of Providence, with regard to this globe, in the multiplication of mankind, their improvement in knowledge and their advancement in happiness." It was in connection with the consideration of this great presentation by Wilson that Justice Harlan, of our Supreme Court, referred to them as having been characterized as "the most comprehensive and luminous commentaries on the Constitution that have come down from that period;" that no one of that body who made this instrument, "the wisest assemblage of public servants that ever convened at any time in the history of the world," no one of them was "wiser than James Wilson," who was "in the highest and best sense a great lawyer" and "a master in the science of government." It is in a similar consideration, too, that Bancroft refers to "the technical knowledge, the comprehensive grasp and the force of argument of this great man."

The present speaker seldom deals in historical estimates, but prefers rather to lay before his readers the material upon which to base their own. The greatness of James Wilson, however, so well attested as it has been by many an authority, leads him to offer one in this instance with great confidence. What Thomas Jefferson was to the

Declaration of Independence, what John Paul Jones was to the Navy, and George Washington to the Army; what Robert Morris was to the finance of the Revolution, and Franklin to its diplomacy, that, in the fullest measure, James Wilson was to the Constitution of the United States.

By July 4, '88, eight other States had joined Delaware and Pennsylvania in ratifying the Constitution, and the whole land was ablaze with enthusiasm. Philadelphia streets were in brilliant array with procession, and the river was gay with ten vessels decorated to represent the ten States. And who but James Wilson should voice the rejoicing in a public address? He met the occasion with like spirit, interpreting and illuminating their great symbolical procession, in which Justices of the Supreme Court were not ashamed to sit in state in sections of the pageantry emblematic of the great new fundamental law. Near the close of his address, he exclaimed: "I do not believe that the Constitution was the offspring of inspiration, but I am perfectly satisfied that the union of the States, in its form and adoption, is as much the work of Divine Providence as any of the miracles recorded in the Old and New Testaments were the effect of a Divine power. 'Tis done! We have become a nation. America has ceased to be the only power in the world that has derived no benefit from her declaration of independence." Two days before this event, the old Congress provided for the election under the new government in January, '89, and by April 30th the Executive and Legislative branches of National Government were instituted. During the summer the matter of the Supreme Court occupied President Washington's most serious consideration. As Carson has shown in his history of that court, Wilson was thought of among some of the leading men for the Chief Justiceship, but as the President wished the Minister to France, Mr. Jefferson, to be Secretary of State, when Mr. Jay, of New York, was practically in that latter office under the old Congress, there was abundant reason for giv-

ing Mr. Jay the highest judicial place. On the 29th of September a commission as Justice was issued to Mr. Wilson, and the following day Washington wrote him that he was placing on this bench "the Chief Pillar upon which our government must rest," to use his own words, "such men as I conceive would give dignity and lustre to our national character," and counted on Wilson's love of country and general welfare to make his acceptance of the office certain. Five days later Wilson took the oath of office at the hands of the Mayor of Philadelphia, Samuel Powell, and on the 18th of October Justice Wilson reported his acceptance and legal qualification to the President.

Scarcely more than a month later, namely, on November 24th, he was sitting as a member of the State Constitutional Convention, which had been provided for almost immediately after the new National Government began to exist at New York, and was now able to displace the hated Constitution of '76 with one based upon the same principles as the new National one. This was Wilson's last constitutional work, and it was no easy task, for almost a year passed before the convention adjourned. With characteristic vigor he devoted himself to the vital parts of the instrument, and his argument on the last day of '89 against Mr. Lewis's plan to have the Senate elected by electors, as in Maryland, was the climax in the convention. "By this plan," said he, "I am now called upon to delegate this trust"—of personally choosing representatives, a trust whose magnitude he had just described—"delegate this trust in a manner, and to transfer it to a distance, which I have never experienced before. I am called upon, not to appoint legislators of my own choice, but to empower others to appoint whomsoever they shall think proper, to be legislators over me, and over those nearest to me in the different relations of life. I am called upon to do this not only for myself, but for thousands of my constituents, who have confided to me their interests and rights in this convention. I am called upon to do this

for my constituents and for myself, for the avowed purpose of introducing a choice, different from that which they or I would make. I say different, because if the people and the electors would choose the same Senators, there cannot be even a shadow of pretence for acting by the nugatory intervention of electors." This powerful address was again in line with Wilson's great trust in the people, and they must have beheld, with amusement, at their own expense, this man whom they were accustomed to dub an "aristocrat" enacting this rôle. The result is well known—Wilson gave another constitution the stamp of democracy. It may be added that the original address is also among the treasures of the Historical Society of Pennsylvania.

His attendance on the convention was interrupted a month later by the first meeting of the National Supreme Court in the Exchange Building in New York, but only for a brief period. He went on his first circuit in the spring. During the summer vacation, however, another interesting event demanded his public services in the metropolis and capital of the new Nation. A brilliant and learned young member of the convention, Charles Smith, also a lawyer, the favorite son of the Provost of the College of Philadelphia, and prompted possibly by his ambitious father, conceived the idea of instituting a law school in that institution, and applied to the trustees. Messrs. Shippen and Hare and Justice Wilson were made a committee to consider the matter, and it was determined that the college ought, by all means, to enter upon the proper exposition of the new fundamental law in both State and Nation, in this seat of learning at the State and National Capital. Here was undoubtedly a great opportunity for a much needed exposition and defence of the new sources of law in State and Nation, and it was so instantly recognized that no one was so fit to be the American Blackstone and timely official expounder of the constitutions at the National metropolis and capital as Justice Wilson himself. Young Smith was apparently

not even considered. It was late in the year, however, before the lectures were ready (*i. e.* 1790)—about the time the new State Constitution went into effect. It was on Wednesday at 6 o'clock, the close of the mid-winter day of December 15th, that the President and other National and State officers of the government buildings at Sixth and Chestnut Streets, went over to Fourth Street, below Arch, and gathered on the main floor of the assembly room of the college, while other attendants, citizens and students, filled the gallery, and wives and sisters were much in evidence. Indeed, the distinguished political scientist had to confess that this was the first "fair audience" he ever addressed.

With characteristic vigor and instinct for essentials, if not impatience of detail, he showed the necessity for a new outlook on law; the fundamentals were now so different from other countries. The Inns of Court must be replaced by University provision for law as both a general and professional study. The British Constitution and law must hereafter be studied and used with great caution, as not only different, but vitally inferior to the American. Writers on British law, like Blackstone, must be studied with great caution, and he gives marked attention to the nature of the warning, namely, that they did not merely not appreciate the great principle that the source of power is in the people, but some speak ambiguously about it as a basis of constitutional law, and some flatly deny it, as does Blackstone himself. "The Fate of sovereignty," said Wilson, "has been similar to that of the Nile. Always *magnificent*, always *interesting* to Mankind, it has become alternately their Blessing and their Curse. Its origin has often been attempted to be traced. The *Great* and the *Wise* have embarked in the Undertaking; though seldom, it must be owned, with a Spirit of just Enquiry; or in the direction which leads to important discovery. The Source of Sovereignty was still concealed beyond some impenetrable mystery, and, because





**REBURIAL AT CHRIST CHURCH, PHILADELPHIA**

November 22, 1906



it was concealed, *Philosophers* and *Politicians*, in this instance, *gravely taught* what, in the *other*, the *Poet* had *fondly fabled*, that it must be something *more than human*. It was impiously asserted to be *divine*. Lately, the Enquiry has been recommenced with a different Spirit, and in a new Direction; and, although the Discovery of Nothing was very *astonishing*, yet the discovery of something very *useful* and *true* has been the Result. The *dread and redoubtable SOVEREIGN*, when traced to his ultimate and genuine Source, has been found, as he ought to have been found, in the *free and independent MAN*. This *Truth*, so simple and natural, and yet so neglected or despised, may be appreciated as the *first and fundamental Principle* in the Science of Government."

He was to deliver twenty-four lectures a year, and by the time his first course was finished, in the spring of 1791, a still more formidable undertaking appeared on the horizon. That there was a great need for an authoritative digest of State laws under the new Constitution was believed by all who had to do with government. It is doubtful if any one would realize it more quickly than Wilson, and did he but realize it, it would be wholly in keeping with his courageous attempts to secure great results, if he took measures to secure this result. Indeed, there are some indications that point to a probability that he, more than any one else, felt the need of a digest of and commentaries on both State and National law, and felt an honorable desire to provide them himself, under proper authority. At any rate, on March 5th, the State House of Representatives passed a resolution providing that Wilson be appointed to do it for the State and be instructed to draw on the treasurer for a specific amount for expenses. It went to the Senate and that body asked for a Committee of Conference. The House appointed a Committee who insisted that the Senate Committee put the points of conference in writing, and the Senate Committee refused, intimating that the course of the House

Committee was unconstitutional in the matter of the treasury. Wilson was accustomed to see legislative *personnel* and action change, and he undertook the work, with the hope that the Senate would be brought around in due time. At any rate, on August 24th, he reported progress to the House, and this shows that he was so full of a realization of what ought to be done for both the State and Nation in simplifying the literary medium of law that he was willing to take all needful risks to bring it about. During that autumn of '91 he and President Washington had an interview on the subject of a similar digest of National law, and on the last day of the year he enclosed the President a copy of his letter to the House on the State digest, and another on the National one. Some of this latter communication is very striking. He said that the difficult and delicate line of authority between State and Nation must be run, and it could be done with peculiar advantage in connection with Pennsylvania, for, said he: "With an express and avowed reference to the Constitution of the United States that of Pennsylvania has been *sedulously framed*. It is probable, therefore, that the Directions, which the line above mentioned ought to take, may be traced with a satisfactory degree of *Clearness* as well as *Precision*; and that neither *Vacancies* nor *Interferences* will be found between the Limits of the two Jurisdictions." He desires to do both and gives his reasons: "In the formation of both constitutions, that of the United States and that of Pennsylvania, I took a faithful and assiduous Part. So far, therefore, as my Abilities can reach, I may be supposed to know their *Principles* and their connections; and the various *relations* and *dependencies*, which their Principles and Connections *ought* to produce in the *different parts of legislation*. In the *study* and in the *practice*, too, of *law*, and *systematic politics*, I have been engaged for a time considerably long, and on a scale considerably extensive. I am already employed in executing *one* part of the great plan. If I can command a

tolerable share of success in that part, I can command an equal share in the *other* also. Nay, I believe that *both* parts can be executed *together* better than either part can be executed separately." It is peculiarly interesting to know that Washington submitted the matter to his Attorney-General, Edmond Randolph, and that gentleman took two sittings to writing the President, of whose attitude he was not quite sure, one of the most adroit epistles to secure negative action that ever was produced.

It is a curious coincidence, and significant, that a Senate and a distinguished Southerner should have aided in preventing Wilson, the advocate of the people and of nationality, from becoming our American Blackstone and becoming the official literary interpreter of our constitutions. Whether he would ever have finished the work alone, as he attempted to do for awhile, at least, cannot be known, nor need we, his posterity, demand that he do a greater work than the mighty work that he did do. Possibly it required a half century and a civil war to realize Wilson's great teachings regarding the Constitution—possibly it will require even more than the century that has already passed to do so. With the failure of these projects came the merging of the college and university when his second course of law lectures was but partially finished; and, although the new institution called him to the chair, he felt his mission accomplished, and thereafter devoted himself to the work of the Supreme Court and his private affairs.

Wilson was now in his fiftieth year. The story of the work of the Supreme Court during the period he sat upon its bench has been well told by Carson in his history of that body. Here, as elsewhere, Wilson stood on the principles of nationality and the sovereignty of the citizen. It was not long after the period just described that the most notable decision of his service was made, when one was rendered early in 1793 in the celebrated case of *Chisholm vs. Georgia*, when Justice Wilson struck the keynote of the question early in

the deliberations of the court by saying that the problem "may, perhaps, be ultimately resolved into one no less radical than this: 'Do the people of the United States form a nation?'" And such, indeed, the problem was, and it was decided in the affirmative, although to undo a specific feature of the decision the Eleventh Amendment was at once passed. "The principles of the decision," says D. O. Kellogg in a suggestive sketch of Wilson in *Lippincott's* for February, 1899, "have long since overridden the amendment; for, while we cannot directly sue a sovereign State, the lawyers, forced by the exigencies of a decent equity, have provided for suing officers of government whose costs and penalties the State, and even the United States, now freely pay out of the taxes. I am persuaded," continued Mr. Kellogg, "that James Wilson was on the short cut to a better and an ultimate solution of this problem of political jurisprudence, so vital to the future of democracy." And, says Mr. Carson, also: "The importance of the decision, however, remained. \* \* \* The doctrine of an indissoluble Union, though not in terms declared, was in its elements contained in this decision, which proved of priceless value in determining, at the very outset of our National career, the true character of our government."<sup>1</sup>

It was soon after this that Justice Wilson met Miss Hannah Grey, of Boston, who made such an impression upon him that on June 20, '93, he wrote her a proposal of marriage (the letter is now in the possession of Mr. Gratz, of this city), which was accepted, and the union soon followed. It was shortly before this that his discussion of the Constitution was published in London as commentaries, and also that General St. Clair wrote that he understood that he (Wilson) was now "as rich as a Jew." His private opera-

<sup>1</sup>Jefferson tells of a pasquinade published at the time of the trouble with the French over Citizen Genet, in which Washington and Wilson were represented as suffering decapitation in the French manner because of their attitude toward that general subject.

tions in land and in industrial affairs were, indeed, on a scale like those of his friend, Morris. It was two years after this date that he made that stupendous purchase of Southern lands referred to—as lands were the great field of investment in those days as industrials are in our own. Two years more and the severe symptoms of the panic began. In '96 it became evident that Morris was about to fail, and, as is often the case, an insignificant and vitriolic creditor precipitated the attack on that great financier, who, finally, on February 15, '98, according to the strikingly logical legal proposition of that day, that if a man got in debt the way for him to be enabled to pay it was to lock him up so he couldn't do so—according to this law, the great financier of the Revolution was imprisoned in the old Prune Street jail. The attack on Wilson and others began in '97, about the same time, but after Morris's incarceration certain creditors began to threaten him. He was at this time out on his colleague, Justice Iredell's, circuit in North Carolina, his headquarters being the latter's home in Edenton. Even there the debtor's law prevailed, and Wilson was arrested on a debt which, said he, "was originally none of mine." The terrible crash, to his high spirit, proved too heavy a burden, and his health broke under it, causing those who made the attack to reconsider their action. "His mind," said Mrs. Wilson, in a letter to Wilson's son, on September 1st, after his death three days before, on the 28th ultimo, "had been in such a state for the last six months, harassed and perplexed, that it was more than he could possibly bear, and brought on a violent nervous fever. I never knew of his arrest till since his death, and now can account for many things he said in his delirium," for he was not sensible for five minutes at a time during his long illness, which finally developed into strangury, which caused his death.

Justice Iredell, a brother-in-law of Governor Johnston, had hastened home, and arrived just before his death. By this time Wilson's affairs were in absolute wreck, and his

son, Bird, a young lawyer barely of age, was left to bear the family responsibilities. To remove the remains of the great jurist and statesman so far was out of the question. Governor Johnston's beautiful country seat, on the banks of the Albemarle, with its tiny, evergreen-marked family burial lot, opened its hospitable gates, and all that remained of this great lover of the people was deposited in its soil, and that, too, in a manner which seemed to say: "Here, as in a receptacle, he shall lie, in the company of our own distinguished dead, until the people of Pennsylvania and the United States, who owe him so great a debt of gratitude, shall, in some other century, know his great legacy of liberty and law, and come to give him adequate burial." And that time has come, and the people of our State and Nation, before the leaves of autumn are all fallen, are to bring the remains of this great man to rest in state in our National Hall of Liberty and Law awhile, and then find an abiding place in the dust of Christ Church beside those of the bride of his youth. And I do furthermore profoundly believe that the people of Pennsylvania will erect to his memory, near the shadow of the statue of Penn himself, an image that will say daily to her people that here was one of the greatest friends of their liberties. And I may say even more, and on a basis which, if I were now at liberty to reveal it, would warrant an equally serious belief, that I am confident before a half-dozen years shall pass, the visitor at our National capital may pause before a heroic figure, strikingly erect and having in his hands a scroll, with "Constitution" embossed thereon, and, if it shall be inquired by whom it was erected, I know not what will be the reply, but I know what, by all the laws of gratitude, *should be*; and I hope the inquirer may be directed for answer to these words emblazoned on the pedestal's base: "We, the People of the United States."









